



June 5, 2019

Via Certified Mail, Return Receipt Requested

Ahsahka Water and Sewer District
P.O. Box 37
Ahsahka, Idaho 83520

Re: Notice of Intent to Sue the Ahsahka Water and Sewer District Over Clean Water Act Violations at the District's Wastewater Treatment Plant

Dear Ahsahka Water and Sewer District:

We write on behalf of our client, the Idaho Conservation League ("ICL"), to provide you with notice of ICL's intent to initiate a federal court lawsuit against the Ahsahka Water and Sewer District (the "District") to enforce provisions of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"). The District's wastewater treatment plant ("WWTP") is covered by National Pollutant Discharge Elimination System ("NPDES") Permit ID-002522-4 (the "Permit"). The Permit sets specific requirements that the District must follow to protect water quality in the Clearwater River and the Big Creek-Clearwater River Watershed. As set forth below, the District violated and continues to violate the effluent limitations and other requirements of the Permit in violation of the CWA, 33 U.S.C. §§ 1311 & 1342.

ICL sends this letter pursuant to Section 505 of the CWA, 33 U.S.C. § 1365, which requires providing notice 60 days before filing a citizen suit in federal court to enforce the CWA. Unless the District takes the steps necessary to remedy its ongoing CWA violations, ICL intends to file suit in U.S. District Court following the expiration of the 60-day notice period to seek injunctive relief and civil penalties for the violations enumerated below and for any additional similar violations identified subsequently.

Party Giving Notice; Representing Attorney

The full name, address, and telephone number of the party giving notice is:

Idaho Conservation League
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The attorneys representing ICL in this matter are:

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ICL's Commitment to Protecting Water Quality

Since 1973, the Idaho Conservation League has been Idaho's voice for clean water, clean air, and wilderness—values that are the foundation of Idaho's extraordinary quality of life. ICL works to protect these values through public education, outreach, advocacy, and policy development. As Idaho's largest state-based conservation organization, it represents more than 30,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the rivers and streams of Idaho, including the Clearwater River, through Clean Water Act enforcement and other means. ICL has staff, members, and supporters who live, recreate, and/or work in and around the Big Creek-Clearwater River Watershed, including near and downstream of the pollution discharges from the District's WWTP. ICL staff, members, and supporters frequently visit, recreate, and engage in activities in this area and in areas downstream which are impacted by the District's pollution discharges.

The District's NPDES Permit

The District was issued NPDES Permit No. ID-002522-4, effective 11/01/2011, by the U.S. Environmental Protection Agency ("EPA"). The Permit expired on 10/31/2016 but was administratively continued by EPA. Among other requirements, the Permit places effluent limitations and monitoring requirements on the District's discharges from the WWTP to the Clearwater River. Specifically, the Permit sets effluent limitations and/or monitoring requirements for eleven parameters, including: flow; biochemical oxygen demand ("BOD"); total suspended solids ("TSS"); *E. coli* bacteria; chlorine; and pH. *NPDES Permit No.: ID-002522-4, Table 1.*

For BOD, the Permit includes average monthly limits of 30 mg/L and 19 lbs/day, and average weekly limits of 45 mg/L and 28 lbs/day. *Id.* The Permit also requires the average monthly removal of a minimum of 85% of BOD. *Id.* For total residual chlorine, the Permit includes average monthly limits of 0.5 mg/L and 0.31 lbs/day and an average weekly limit of 0.75 mg/L and 0.47 lbs/day. *Id.* For *E. coli*, the Permit includes an average monthly limit of 126 colonies/100 mL, and an instantaneous maximum limit of 406 colonies/100 mL. *Id.* For TSS, the Permit includes average monthly limits of 30 mg/L and 19 lbs/day, and average weekly limits of 45 mg/L and 28 lbs/day. *Id.* The Permit also requires the average monthly removal of a minimum of 85% of TSS. *Id.* For pH, the Permit requires the pH range to be between 6.5 – 9.0 standard units. *Id.*

Permit Table 1 sets forth effluent monitoring requirements, including sample location, frequency, and type. The District must submit Discharge Monitoring Reports (“DMRs”) to EPA, stating the results of the monitoring requirements set forth in the Permit. *Id.* at III.B. DMRs must be submitted monthly, postmarked by the 10th of the following month. *Id.*

The District’s CWA Violations for Exceeding Permit Effluent Limits

ICL intends to file suit against the District for its past and ongoing discharges of pollutants from the WWTP in excess of the limits authorized by the Permit. The CWA prohibits “the discharge of any pollutant by any person” from a point source into a navigable water unless authorized by an NPDES permit. 33 U.S.C. §§ 1311(a) & 1342(a). “Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action.” 40 C.F.R. § 122.41(a). Violations of permit effluent limits are enforceable through the CWA’s citizen suit provision. 33 U.S.C. § 1365(a) & (f).

Based on the information available from EPA’s ECHO website (www.echo.epa.gov; accessed May 16, 2019), the District has violated and continues to violate the Permit’s effluent limitations for TSS, *E. coli*, and chlorine. The Table below was prepared using information available on ECHO. Each row in the Table corresponds to one month’s reporting and lists the number of effluent limit exceedances by parameter. A review of the District’s DMRs might show additional exceedances.

The Table identifies 61 *instances* over the last five years in which at least one exceedance of the Permit limit occurred for a parameter during the month, representing *at least 61 CWA violations*. However, each *daily* exceedance of an effluent limit constitutes a separate CWA violation. *See* 33 U.S.C. § 1319(d). For example, when a permittee exceeds a monthly or weekly average effluent limit, the permittee is deemed to be in violation of the effluent limit each day of the month or week in which the exceedance occurred. *See, e.g., Sierra Club v. City & Cnty. of Honolulu*, CV No. 04-00463 DAE-BMK, 2007 WL 3166771, *6–*9 (D. Haw. Oct. 30, 2007); *U.S. v. Smithfield Foods*, 191 F.3d 516, 527 (4th Cir. 1999). Therefore, many of these 61 instances identified in the Table represent *more than one* CWA violation. Accounting for the District’s exceedances of monthly effluent limits in the ECHO data, ICL calculates at least 864 total days of exceedances, representing *at least 864 CWA violations*.¹

In the lawsuit, ICL intends to include each and every daily violation represented by the 61 instances of exceedances identified in the Table (at least 864 violations) and any similar additional effluent limit violations that occur hereafter through the resolution of this matter. The District’s DMRs and other documents in the District’s and EPA’s possession, which ICL intends to obtain if this matter is not resolved, include information bearing on the total number of Permit violations that occurred over the last five years and that continue to occur.

¹ Furthermore, when a permittee exceeds a daily effluent limit based on two or more samples in a row, the permittee has violated the CWA on each day of sampling and might have also violated the CWA on each day in between sampling. ICL intends to prove these days of violations in addition to the 864 violations already described.

Table: Summary of effluent limitation exceedances by the Ahsahka Water and Sewer District WWTP from June 2014 through May 2019.

Ahsahka Water and Sewer District		Number of Exceedances Reported by Parameter					
Start	End	TSS			E. coli		Chlorine
		Wkly. Avg	Mo. Avg	% Rem.	Mo. Avg.	Inst. Max	Mo. Avg.
10/1/2014	10/31/2014				1	1	
1/1/2015	1/31/2015				1	1	
2/1/2015	2/28/2015				1	1	
4/1/2015	4/30/2015				1	1	
5/1/2015	5/31/2015					1	
6/1/2015	6/30/2015				1	1	
7/1/2015	7/31/2015				1	1	
8/1/2015	8/31/2015				1	1	
9/1/2015	9/30/2015				1	1	
10/1/2015	10/31/2015				1	1	
12/1/2015	12/31/2015					1	
1/1/2016	1/31/2016				1	1	
3/1/2016	3/31/2016				1	1	
5/1/2016	5/31/2016				1	1	
6/1/2016	6/30/2016				1	1	
7/1/2016	7/31/2016				1	1	
8/1/2016	8/31/2016				1	1	
9/1/2016	9/30/2016				1	1	
10/1/2016	10/31/2016					1	
11/1/2016	11/30/2016				1	1	
1/1/2017	1/31/2017				1	1	
2/1/2017	2/28/2017					1	
8/1/2017	8/31/2017					1	
9/1/2017	9/30/2017						1
10/1/2017	10/31/2017					1	
11/1/2017	11/30/2017					1	
12/1/2017	12/31/2017					1	
1/1/2018	1/31/2018				1	1	
6/1/2018	6/30/2018	1	1	1			
7/1/2018	7/31/2018				1	1	
8/1/2018	8/31/2018				1	1	
9/1/2018	9/30/2018				1	1	
10/1/2018	10/31/2018				1	1	
11/1/2018	11/30/2018					1	
12/1/2018	12/31/2018				1	1	
Total Exceedances		1	1	1	24	33	1
Total Days with exceedances		7	30	30	734	33	30
							Total
							61
							864

The District's Other CWA Violations

The Ahsahka Water and Sewer District also violated and continues to violate its Permit and the CWA by failing to comply with its Permit Schedule, the Permit's monitoring and reporting requirements, the duty to properly operate and maintain the WWTP, and possibly other procedural violations. *See* 33 U.S.C. §§ 1311(a) & 1342(a); 40 C.F.R. § 122.41(a) & (e). ECHO shows the District failed to complete required Permit Schedule events, failed to report that failure, and failed to timely submit required DMR measurements. Documents in the District's and EPA's possession, which ICL will try to obtain if this matter is not resolved, are expected to more fully document these and other similar failures to properly monitor, report, operate, and maintain the WWTP over the last five years and continuing into the future. ICL intends to prove any and all of these CWA violations in this lawsuit.

ICL's Intent to File Suit Seeking Penalties, Injunctive Relief, and Fees

ICL intends to file suit against the Ahsahka Water and Sewer District 60 days from the date of this notice in Federal District Court under the CWA's citizen suit enforcement provision, 33 U.S.C. § 1365, if the District has not yet taken appropriate remedial action to halt these ongoing CWA violations and limit its pollution discharges to the Clearwater River and the Big Creek-Clearwater River Watershed. The court may award—and ICL intends to seek—injunctive relief as well as statutory penalties. 33 U.S.C. §§ 1319(d), 1365(a) & (b). The court may also award—and ICL intends to seek—reasonable attorney fees and litigation costs ICL incurs in successfully prosecuting this action. 33 U.S.C. § 1365(d).

Section 309 of the CWA, 33 U.S.C. § 1319(d) (adjusted by 40 C.F.R. § 19.4 and 84 Fed. Reg. 2056 (Feb. 6, 2019)), provides for the imposition of civil penalties of up to \$37,500 per violation per day that occurred prior to November 2, 2015, and up to \$54,833 per violation per day that occurred on November 2, 2015, and after. As shown in the Table, the District committed at least 864 separate CWA violations by exceeding its Permit effluent limits. Additionally, as explained in Footnote 1, each exceedance of a daily effluent limit in the Table may in fact represent more than one Permit violation, which ICL intends to prove in litigation. Furthermore, the District is subject to additional penalties for each of its reporting, monitoring, operating, and maintenance violations. ICL intends to pursue civil penalties for each and every one of the District's CWA violations identified herein and for any similar future violations that occur while this matter is underway.

One of the principal purposes of the CWA notice requirement is to allow the parties to discuss resolution of claims short of litigation. ICL sends this notice letter, in part, to encourage settlement negotiations which could avoid the need for litigation. During the 60-day notice period, ICL will be available to discuss alternative remedies and actions that might be taken to address the District's past violations and assure future compliance with the CWA. If you wish to discuss any aspect of this notice or settlement, please contact Austin Walkins at ICL or Bryan Hurlbutt at Advocates for the West (contact information above). Should the District have any facts, documents, or other information which you believe might bear upon the alleged violations set forth in this letter, please provide those to us now in order to avoid unnecessary litigation.

Respectfully,



Bryan Hurlbutt
Garrison Todd
ADVOCATES FOR THE WEST

Mark Ryan
RYAN & KUEHLER PLLC

Attorneys for Idaho Conservation League

CC Via Certified Mail, Return Receipt Requested:

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